



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (714) 558-6760
FAX (916) 323-3387
www.boe.ca.gov

BETTY T. YEE
Acting Member
First District, San Francisco

BILL LEONARD
Second District, Sacramento/Ontario

CLAUDE PARRISH
Third District, Long Beach

JOHN CHIANG
Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

August 9, 2006

Honorable Rick Auerbach
Los Angeles County Assessor
500 W. Temple Street, Room 320
Los Angeles, CA 90012-2770

Re: Taxation of Fractional Aircraft Ownership Interests

Dear Mr. Auerbach:

This is in response to your April 14, 2006 letter addressed to the Acting Assistant Chief Counsel Robert Lambert. In that letter, you requested our opinion as to whether certain fractionally owned aircraft are taxable in California. As explained below, it is our opinion that such aircraft may be taxable in California as general aviation aircraft. Furthermore, Revenue and Taxation Code¹ section 405 requires your office to assess all taxable property in your county, including aircraft, to the persons owning, claiming, possessing, or controlling it on the lien date. However, based on the limited information provided, we are unable to determine which of these individual aircraft acquired taxable situs in California or the county in which these aircraft are habitually situated, if any.

For aircraft habitually situated in Los Angeles County, we recommend that your staff value these fractionally owned aircraft as general aircraft using the methods recommended in the applicable sections of the Assessors' Handbook. For those aircraft that have their primary tax situs outside of California, your staff should apportion the resulting values based on the percentage of time those aircraft are in this state.

Background and Facts

As described in your letter, the following facts are relevant to this analysis:

1. Fractional aircraft ownership has become a popular option for many businesses and individuals.
2. Participants in this market divide ownership of a general aviation aircraft into smaller fractional ownership interests, much like a timeshare estate in real property without fixed dates of possession.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

3. A management company typically maintains operational control of these fractionally owned aircraft.
4. Fractional owners are allowed to request flights on an as-needed basis.
5. Depending on the aircraft, there may be as few as two or as many as 20 fractional owners.
6. Frequently, these fractional owners travel on aircraft different from the ones in which they hold ownership interests.
7. At present, over 1,100 private aircraft operate under fractional ownership agreements, compared with only 50 such arrangements during 1996.
8. Your investigation found that one market participant, N , Inc. (N), operates and manages over 600 aircraft as an on-demand (unscheduled) air taxi service for its fractional owners. Aircraft under N's control flew over 275,000 flight segments during 2004, many of which were in California.
9. For 2005, N's aircraft made approximately 12,100 takeoffs/landings at four airports located in Los Angeles County. Those flights represent approximately 4.4 percent of N's total system capacity.
10. Our understanding is that the aircraft at issue have primary taxable situs outside of California and acquire taxable situs in California through their frequent intrastate and interstate flights from California airports.

Law and Analysis

1. Have any of these fractionally owned aircraft acquired situs in California for property tax purposes?

Yes, some of N's fractionally owned aircraft have likely acquired taxable situs in California.

In a well-established line of cases, the United States Supreme Court has held that personal property involved in interstate travel or commerce, such as an aircraft, may be subject to taxation by any state or states (or their political subdivisions) in which the property maintains a substantial presence. (See *Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment* (1954) 347 U.S. 590.) As a necessary precondition to the taxing power of a state or subdivision, the constitutional principle of due process requires that the property receive the "opportunities, benefits, and protections" of the taxing jurisdiction by reason of its "habitual or continuous" presence in that jurisdiction. Furthermore, property may have substantial contact with two or more states sufficient to establish a taxable situs in each of those states. (*Johnson Oil Refining Co. v. Oklahoma* (1933) 290 U.S. 158.)

If two or more states acquire the power to tax certain property owing to the property's having acquired tax situs in their states, constitutional principles relative to interstate commerce require that each state impose such a tax only on a nondiscriminatory basis. That is, each state

may impose a tax only in proportion to the “opportunities, benefits and protections” that it affords to the property. Therefore, each state must apportion its tax to the extent that the property could be taxed by another state. (*Central Railroad Co. v. Pennsylvania* (1962) 370 U.S. 607, 614.) Apportionment ensures that property is not subjected to a greater tax burden by reason of its substantial presence in more than one state.

In general, the owner’s domicile state has jurisdiction to tax personal property which has not acquired a taxable situs elsewhere. Whether or not personal property has acquired a new tax situs elsewhere by “continuous or habitual” presence in such other jurisdiction is a factual determination. (*Johnson Oil Refining Co. v. Oklahoma, supra*, at 161.) In *Ice Capades, Inc. v. County of Los Angeles* (1976) 56 Cal.App.3d 745, personal property used in a traveling ice skating show owned by a company domiciled in California was moved for a 3 to 5 month uninterrupted period every year to the company's training headquarters in New Jersey. To determine whether the property acquired a tax situs in New Jersey, the court of appeal focused on the length of time spent and the intent of its presence in that state. The court held that if property is moved from the domicile to another state with the intent that it remain there for a short period and is then moved to another state or to the domicile state, then the owner's domicile remains the tax situs. However, where the property is moved from the domicile state to another state for an indefinite or a relatively long period, then that other state becomes the tax situs. Upon consideration, the court of appeal held that the facts in *Ice Capades* established as a matter of law that “New Jersey has afforded ‘opportunities, benefits, or protection’ of such substance as to fix its power to tax, and hence is a tax situs of Ice Capades property.” (*Ibid.*, at 755.)

In Assessors’ Handbook Section 504, *Assessment of Personal Property and Fixtures* (AH 504), the Board has interpreted *Ice Capades* as holding that, if California is not the state of the owner’s domicile, but the property has acquired tax situs here, then California must apportion its assessment, even though the property may or may not actually be taxable in another state. As explained on page 40 of AH 504: “When property has situs in California but has its permanent or primary situs in another state or country, it is taxable here only to the extent of time spent here.” This interpretation is consistent with the Supreme Court's articulation of the apportionment principle in *Central Railroad Co. v. Pennsylvania* (1962) 370 U.S. 607, 614, wherein it held that “since the domiciliary state is precluded from imposing an ad valorem tax on any property to the extent that it *could* be taxed by another State, not merely on such property as *is* subjected to tax elsewhere, the validity of Pennsylvania's tax must be determined by considering whether the facts in the record disclose a possible tax situs in some jurisdiction.” (Emphasis in the original.) Based upon *Ice Capades*, AH 504 advises that if an aircraft is not a California aircraft but establishes tax situs both inside and outside California, it should be assessed for the time it is actually in California at the airport where it spends the greatest amount of ground time.²

In *GeoMetrics v. County of Santa Clara* (1982) 127 Cal.App.3d 940, the court of appeal applied the same standard to aircraft domiciled in California and located in foreign countries for extended periods of time. Santa Clara County conceded that apportionment was proper for the time the aircraft were engaged in interstate commerce, but contended that it had the right to tax the aircraft without apportionment for the period of time spent outside the country. The court of appeal rejected the county's argument, holding that an unapportioned tax was barred by the

² AH 504, page 40.

commerce clause of the United States Constitution. The record established, however, that there was no bar to taxation of aircraft on an apportioned basis where there was no showing either that the aircraft actually were taxed or legally might be taxed by any foreign countries.

Also important in that case is the *GeoMetrics* court's restatement of and reliance upon *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274, and *Japan Line, Ltd. v. County of Los Angeles* (1979) 441 U.S. 434. In those cases, the United States Supreme Court reconfirmed that a state tax on property used in interstate commerce is valid under the commerce clause if it "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." (*Japan Line, Ltd., supra*, at 444-445 (quoting *Complete Auto Transit, Inc., supra*, at 279). *Complete Auto Transit* and other interstate commerce cases preclude an unapportioned tax under the facts presented for our consideration.

Article XIII, section 14 of the California Constitution requires that "[a]ll property taxed by local government shall be assessed in the county, city, and district in which it is situated." Once a general aircraft has established a tax situs in California, Property Tax Rule³ 205, subdivision (b) provides that the county in which the aircraft is "habitually situated" has taxing jurisdiction. Because aircraft often spend time in two or more counties and Article XIII, section 14 requires taxation by one county, Rule 205, subdivision (b) provides that aircraft have "situs for taxation purposes at the airport in which they are habitually situated when not in flight." If an aircraft spends substantial time at two or more airports, then subdivision (b) further provides that the aircraft has situs at "the airport where it spends the greatest amount of ground time." As noted above, Rule 205 applies only to those aircraft that have tax situs in California.

In your correspondence, you indicated that N, a company with its principal place of business and domicile in New Jersey, essentially operated the fractionally owned aircraft as an "on-demand air taxi for the shareholders." In Assessors' Handbook Section 577, *Assessment of General Aircraft* (AH 577), the Board advised county assessors that "nonscheduled air taxis are treated as general aircraft."⁴ To the extent that an "on-demand" air taxi service is unscheduled, it is our opinion that these fractionally owned aircraft should be assessed as general aircraft.

To determine whether or not these aircraft acquire taxable situs in California, we must first ascertain whether these aircraft maintain a substantial presence in the state. (See *Braniff, supra*.) As applied to the facts presented here, N's aircraft made an average of 4.4 percent of their total takeoffs and landings at airports located in Los Angeles County. According to your inquiry, that level of flight activity corresponds closely to the ratio of flights operated by certificated air carriers operating from Los Angeles County airports. Given that certificated air carriers have established taxable situs in California while operating a similar number of flights, it appears to us that N has acquired California situs for at least some of its aircraft flying into and out of California. Furthermore, this situs determination of is not diminished by any finding that these aircraft have also established situs in another state: property may have substantial contact with two or more states sufficient to establish a taxable situs in each of those states. (See *Johnson Oil Refining Co., supra*.)

³ All Property Tax Rule or Rule references are to Title 18 of the California Code of Regulations.

⁴ AH 577, page 2.

On average, each of N's aircraft made 20.17 takeoffs and landings at Los Angeles County airports during 2005.⁵ For each one of those flights, N's aircraft made use of the "opportunities, benefits and protections" afforded other aircraft making use of Los Angeles County airports. In our opinion, it appears that level of operations gave at least some of N's aircraft taxable situs in Los Angeles County. As discussed above, Property Tax Rule 205, subdivision (b), provides that the county in which aircraft are "habitually situated" has taxing jurisdiction for general aircraft. Here, the facts show that N's aircraft made over 12,100 flights from Los Angeles County airports. To the extent that any of those 12,100 flights were made by aircraft habitually situated in Los Angeles County, your office will bear the burden of assessing these aircraft.

Lastly, significant evidence exists proving that these aircraft are engaged in interstate commerce. Both substantial case law—discussed above—and the Board's advice, on page 40 of AH 504, require that your office apportion any resulting assessment to reflect only the time these aircraft are located in California.

2. Who is the proper assessee of an aircraft that is operationally controlled by one entity and fractionally owned by multiple persons?

Section 405 and AH 577 authorize your office to assess general aircraft to the persons owning or controlling the aircraft on the lien date. To the extent that N maintains operational control of these fractionally owned aircraft, section 405 authorizes your office to assess the aircraft to either N or to the fractional owners.

When selecting the proper assessee for property taxes, county assessors are not limited to the fee owner of that property. Section 405, subdivision (a) provides:

Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date.

The statutory provisions of section 405 are further explained on page 5 of AH 504:

ASSESSEE OF PROPERTY

In determining the assessee, the assessor is not limited to only the fee owners of the property. Sections 405 and 611 authorize the assessor to assess the owners, persons in possession or control, joint assesseees, and/or unknown owners of any property.

Owner, One Who is in Possession or Control

Section 405 identifies the assessee as the "persons owning, claiming, possessing, or controlling it on the lien date." Under most circumstances, this will be the owner. However, the assessee may be one who is simply in possession or control although not the legal owner. This is often the case with leased equipment and improvements related to business property.

For general aircraft, such as those controlled by N, AH 577 provides the following advice:

⁵ Approximately 12,100 system-wide takeoffs and landings in Los Angeles County ÷ 600 aircraft in N's fleet.

ASSESSEE

An aircraft is assessed to the person owning, claiming, possessing, or controlling it on the lien date—the assessee. Assessments are usually made in the name of the person listed as the owner of record on the lien date, based on the official documentation or registration for the aircraft.

Owners who sell their aircraft after the lien date and prior to the fiscal year that the tax bill covers are still liable for the taxes imposed. Although the assessment is based on the value of the aircraft on the preceding lien date, the tax bill received is for the ensuing fiscal year. Thus, in the sale of an aircraft, any proration of taxes is left to the parties involved.⁶

As applied to the facts presented in your correspondence, you report that N—and other aircraft fractional ownership management companies—maintain possession and operational control of these aircraft. This conclusion is supported by the fact that N schedules the flights of these fractionally owned aircraft and employs the over 2,400 pilots who fly the aircraft. Since these fractionally owned aircraft are under N's possession and operational control, section 405 and AH 504 both authorize your office to enroll assessments in either N's name or in the names of the fractional owners.⁷

3. What valuation and/or allocation methodology should your office apply to fractionally owned aircraft?

After estimating the value of these aircraft using the methods prescribed by AH 577, we recommend that you enroll an apportioned value based upon the actual time that each of those aircraft were in California.

Revenue and Taxation Code section 5363 requires assessors to follow the standards and guides prescribed by the Board when estimating the value of general aircraft:

In assessing aircraft, the county assessor shall determine the market value of the aircraft in accordance with standards and guides to the market value of aircraft prescribed by the board. In determining the market value of aircraft the assessor shall not take into account the existence of any custom or common method, if any, in arriving at the market value of any class or classes of aircraft.

Such standards and guides are published in AH 577, wherein the Board recommends county assessors apply the following valuation approaches for general aircraft:

The fundamental principles of appraisal apply to the valuation of aircraft as they do to any other personal or real property. The assessor should consider the three primary approaches to value—cost, comparative sales, and income—when determining the market value of an aircraft. Although the approaches to value are

⁶ AH 577, page 6.

⁷ We found no California case law or other legal resources to guide the selection of a proper assessee for property taxes when an item of personal property has multiple or fractional owners residing in multiple domicile states. In our opinion, however, such guidance is unnecessary to the extent that your office chooses to assess the person or entity controlling the property, since that person or entity will have only one principal place of business or domicile.

similar, the assessment of aircraft and other personal property differ significantly from real property in that the market value of an aircraft must be estimated on the lien date every year. Unlike most real property, the assessment of aircraft is not governed by the base year value limitations of article XIII A of the California Constitution (commonly known as Proposition 13).⁸

Assessors must employ the advice listed above in concert with section 5364, which provides as follows:

The board shall establish standards and fix guides or, after a public hearing, shall review and approve commercially available guides, to be used by the county assessor in the assessment of aircraft at market value.

To meet this statutory mandate, the Board has officially adopted two commercially available aircraft price guides for use when estimating the value of general aircraft: *Aircraft Bluebook-Price Digest* is the primary guide for valuing general aircraft, and the *Vref Aircraft Value Reference* is the alternate guide for aircraft not listed in the *Aircraft Bluebook*. (See AH 577, p. 18 and Letter To Assessors No. 97/03.) In addition, the Board has advised county assessors to reduce the retail prices listed in the valuation guides by 10 percent to estimate the value of aircraft in average condition on the lien date. (*Ibid.*) Thus, we recommend that you value general aircraft owned by N using the method described in the *Aircraft Bluebook-Price Digest*.

Lastly, after estimating the full cash value of these aircraft, your office must apportion the resulting values: “When property has situs in California but has its permanent or primary situs in another state or country, it is taxable here only to the extent of time spent here.”⁹ Apportionment conforms to the Board’s advice on page 23 of AH 577:

OWNER DOMICILED IN ANOTHER STATE

When an aircraft owner is domiciled in a state other than California and the aircraft (1) has established a tax situs in the owner's domiciliary state, (2) has established a tax situs in California, and (3) operates in another state, states, or foreign country, the county may assess portions of value reflecting only the portion of the year that the aircraft is present in California. In other words, the value is apportioned for only the time spent in California.

Example 3

An aircraft owner has domicile in Arizona, and the aircraft owned has established a tax situs in California for 60 percent of the year. The aircraft has also established a tax situs in Arizona for 20 percent of the year. The other 20 percent of the time, the aircraft is flown in an out of five other states or foreign countries, but does not establish tax situs in any of the five states or foreign countries. Because the owner of the aircraft is domiciled outside of California, the California county where the aircraft is habitually situated would enroll 60 percent of the value of the aircraft.

⁸ AH 577, page 12.

⁹ AH 504, page 40.

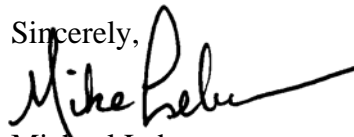
To assist the appraiser in determining situs for allocation purposes, the appraiser may request certain documents from the taxpayer. Documents that may be useful include, but are not limited to, hangar or tie-down receipts, flight or maintenance logs, and paid tax bills from another county, state, or country.

Here, the facts show that N has its domicile and principal place of business in New Jersey and that some—if not all—of the aircraft under its control operate in interstate commerce. Since these aircraft are essentially operated as unscheduled air taxis, it is difficult if not impossible to use any one sample period to accurately estimate the total time these aircraft spend in California. In our opinion, it would be more practical to assess the fractionally owned aircraft controlled by N based upon the actual time that each of those aircraft were in California each year.

Furthermore, Example 3 describes how the county where these aircraft are habitually situated bears the responsibility of enrolling the entire value apportioned to California. Based on the limited information provided, however, we are unable to determine which of these individual aircraft acquired taxable situs in California or the county in which such aircraft might be habitually situated, if any. If N's aircraft flying in and out of Los Angeles County airports are habitually situated in Los Angeles County, then your office would be required to enroll the entire value allocated to California—not just the amount allocated to Los Angeles County—as required by Rule 205, subdivision (b).

The views expressed in this letter are only advisory in nature. They represent the analysis of the Board staff based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Sincerely,



Michael Lebeau
Senior Tax Counsel

ML:jh

Prec/situs/06/233 ml.doc
Prec/aircraft/06/233 ml.doc

cc: Honorable Rick Auerbach
Los Angeles County Assessor
Attn:

Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70